IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

OP.No. 10865 of 2001(R)

PETITIONER:

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1. T.D.JOHNSON, AGED 36 YEARS,
SON OF T.P.DEVASSY, BUGLER/HAVILDAR 1227,
F. COMPANY, KAP 4TH BATTALIAN,
NAMGATTUPARAMBU P.O.,
KALLIASSERIL P.O., KANNOOR

2. ANTONY K.L., AGED 39 YEARS,
SON OF LAZAR K.A., BUGLER BAVILDAR 1228,
E.COMPANY, KAP 4TH BATTALIAN,
MANGATTU PARAMBU,
KALLIASSERRY P.O., KANNOOR

3. K.SADASIVAN, AGED 41 YEARS, SON OF K.PAITHAL,
BUGLER HAVILDAR 1231, H.Q. COMPANY KAP 4TH BATTALIAN,
MANGATTUPARAMBU, KANNOOR

4. O.K. BALAKRISHNAN, AGED 38 YEARS,
SON OF O.K. GOVINDANKUTTY,
BUGLER HAVILDAR 1232,
B. COMPANY KAP 4TH BATTALIAN,
MANGATTUPARAMBU, KANNOOR

5. GRANCIS ABRAHAM, AGED 37 YEARS, SON OF ABRAHAM,
BUGLER HAVILDAR 1257,
A COMPANY KAP 4TH BATTALIAN,
MANGATTUPARAMBU, KANNOOR

BY ADV. SRI.K.L.NARASIMHAN

RESPONDENTS:

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1. STATE OF KERALA, REP. BY ITS
CHIEF SECRETARY, SECRETARIAT, TVM.

2. DIRECTOR GENERAL OF POLICE,
POLICE HEADQUARTERS, VAZHUTHACAUD, TVM.

3. COMMANDANT, KAP 4TH BATTALIAN,
MANGATTUPARAMBU, KANNOOR

BY GOVERNMENT PLEADER T.B.RAMANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- TRUE COPY OF ORDER DATED 21.2.76 ISSUED BY THE FIRST RESPONDENT

EXT.P2- TRUE COPY OF ORDER DATED 1.2.77 ISSUED BY THE FIRST RESPONDENT

EXT.P3- TRUE COPY OF ORDER DATED 8.11.99 ISSUED BY THE 3RD RESPONDENT

EXT.P4- TRUE COPY OF ORDER DATED 16.11.99 ISSUED BY THE 3RD RESPONDENT

EXT.P5- TRUE COPY OF ORDER DATED 9.3.2000 ISSUED BY THE 2ND RESPONDENT

EXT.P6- TRUE COPY OF THE COMMUNICATION DATED 13.10.99 SENT BY THE FIRST RESPONDENT TO THE 2ND RESPONDENT

EXT.P7- TRUE COPY OF THE ORDER B.O.NO.35/2001-KAP 4 ISSUED BY THE 3RD RESPONDENT

EXT.P8- TRUE COPY OF THE COMMUNICATION DATED 8.2.2001 ISSUED TO THE PETITIONERS

EXT.P9- TRUE COPY OF THE ORDER IN CMP.17846/00 IN O.P.10764/00 DATED 4.4.2000.

(TRUE COPY)

P.A TO JUDGE

THOTTATHIL B. RADHAKRISHNAN, J

O.P. 10865/2001

Dated this 24th day of September, 2007

JUDGMENT

By Ext.P5 dated 9.3.2000, the Director General of Police informed all Officers in List 'B' that only Band Police Constables those who completed 15 years of service and qualified for regular promotion post (Band Havildar) are eligible for the scale of pay of Rs.5000-8150 and that Bugler PCs and Drummer PCs are not entitled for such benefit. To say so, the DGP referred to Government letter dated 13.10.1999.

2. The learned counsel for the petitioners points out that the classification between the Band Police Constables on the one hand and the Bugler PCs and Drummer PCs on the other, fall for consideration in O.P.10764/2000 and that the said decision has been quashed to the extent it affects the petitioners in O.P.10764/2000. The learned Government Pleader however, contends that Bugler PCs and Drummer PCs are not the same as Band Police Constables and that Band

Police Constables have an avenue for regular promotion while the others do not. It is also pointed out by the learned Government Pleader that the stand of the respondents is that the judgment in O.P.10764/2000 is not correctly decided.

3. By rendering the said judgment dated 6.6.2006, the learned Judge has taken into consideration that Higher Grade was granted to the Police Constables and that the post of Bugler PCs and Drummer PCs are included in the technical category by virtue of Government Orders dated 21.2.1976 and 1.2.1977 and that it is not necessary to have a supervisor or higher post to grant Higher Grade. It was under such circumstances that Ext.P6 dated 9.3.2000 was set aside by the learned Judge declaring that the petitioners in O.P.10764/2000 are entitled to the second higher grade on completion of the 15 years of service in the scale of pay of Rs.5000-8150 against the scale of pay of Rs.4500-7000/-. Government have not filed any appeal against the decision in O.P.10764/2000.

4. Having applied a particular interpretation to the Government orders with Government not having appealed against that, I do not deem it appropriate to refuse to apply the decision in O.P.10764/2000 to the petitioners in this case.

In the result, this writ petition is allowed following the judgment in O.P.10764/2000. The impugned Ext.P5 is accordingly quashed and as a consequence, Ext.P7 would also stand quashed. Necessary consequences on the basis of the declaration made in the judgment in O.P.10764/2000 shall apply to the case of the petitioners also.

THOTTATHIL B. RADHAKRISHNAN,
Judge

mrcs